

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:

RAFAEL MONTES DE OCA

DEBTOR

CASE NO. 15-10587TMD

CHAPTER 13

MOTION FOR RELIEF FROM AUTOMATIC STAY TO CONTINUE
APPEAL PENDING IN THE THIRD COURT OF APPEALS

TO THE HONORABLE TONY DAVIS:

This pleading requests relief that may be adverse to your interest.

If not timely response is filed within fourteen (14) days from the date of service, the relief requested in the motion will be granted without a hearing being held.

A timely filed response is necessary for a hearing to be held.

1. This MOTION FOR RELIEF FROM AUTOMATIC STAY TO CONTINUE APPEAL PENDING IN THE THIRD COURT OF APPEALS is filed on behalf of RAFAEL MONTES DE OCA ("Movant"), for cause. This motion is further filed pursuant to Bankruptcy Rule 9014 and constitutes a contested matter thereunder.

2. This court has jurisdiction over this proceeding pursuant to 28 U.S.C. Section 1334 and 28 U.S.C. Section 157(b)(2)(G).

3. The Movant, RAFAEL MONTES DE OCA is the Debtor in this Chapter 13 proceeding which was filed May 4, 2015. Prior to the filing Movant had been involved in a lawsuit with Eduardo Gutierrez, a creditor in this case. Mr. Gutierrez received a Judgment in his favor in the County Court at Law No. 2 of Travis County, Texas, Cause No. C-1-CV-12-000782 July 24, 2014. A Notice of Appeal was timely filed by Movant October 20, 2014 in Cause No. 03-14-00668-CV in the Third Court of Appeals. The Reporter's Record was filed November 12, 2014. The Clerk's Record was filed November 25, 2014 and the Appellant's brief was filed February 25, 2015. This Case was filed to Stay and action for foreclosure by Mr. Gutierrez and the appeal was then stayed by the Court of Appeals May 19, 2015.

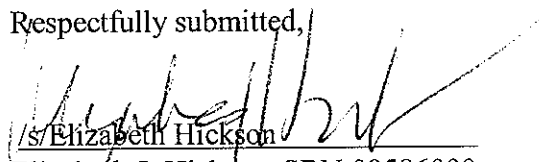
4. Movant is prepared to go forward with this appeal which if successful will result in a

reduction of Mr. Gutierrez' claim. The prosecution of this appeal will not affect Movant's ability to maintain his plan payments nor will it adversely affect any of his property. His attorney was paid in advance prior to the filing for his services to prosecute this appeal

5. Movant is prevented from pursuing this Appeal as a result of the automatic stay provisions of 11 U.S.C. Section 362(a)(1). Cause exists under 11 U.S.C. Section 362(d)(1) for modifying such stay so as to permit Movant to proceed with the appeal.

WHEREFORE, PREMISES CONSIDERED, Movant prays for an order modifying the automatic stay to permit him to pursue the appeal pending in the Third Court of Appeals of Texas Cause No. 03-14-00668-CV titled Rafael Montes De Oca, Appellant v. Eduardo Gutierrez, Appellee and to litigate any appeals therefrom. Movant further prays for such other and further relief to which he may be justly entitled.

Respectfully submitted,


/s/Elizabeth Hickson
Elizabeth J. Hickson, SBN 09586000
4833 Spicewood Springs Road
Suite 200
Austin, Texas 78759
(512)346-8597
(512)346-2047 fax
Attorney for Debtor

CERTIFICATE OF SERVICE

The above signed hereby certifies that on January 12, 2016, a true and correct copy of the foregoing document was served upon the following parties-in-interest:

By Electronic Notice:

Deborah B. Langehennig,
Chapter 13 Trustee

Lance Justin Erickson

Lee Gordon

B. Weldon Ponder, Jr.

Douglas J. Powell

Mitchell D. Savrick

Michael W. Zientz

and to all creditors on the attached creditor matrix.

Label Matrix for local noticing
0542-1
Case 15-10587-tmd
Western District of Texas
Austin
Tue Jan 12 16:01:00 CST 2016

Cavalry Spv 1, LLC
c/o Bass & Associates, P.C.
3936 E. Ft. Lowell Rd, Suite #200
Tucson, AZ 85712-1083

Citi Mortgage, Inc.
PO Box 689196
Des Moines, IA 50368-9196

County of Williamson
c/o Lee Gordon
P.O. Box 1269
Round Rock, TX 78680-1269

Fernando Montes and Edgar Solano
15200 FM 1825
Pflugerville, TX 78660-3130

Internal Revenue Service
P.O. Box 7346
Philadelphia, PA 19101-7346

(p)LILLIAN WILSON LLC
3432 GREYSTONE DR
STE 100
AUSTIN TX 78731-2357

Ocwen Loan Servicing LLC
c/o Michael Zientz
14160 North Dallas Parkway, Ste. 900
Dallas, TX 75254-4314

Reagan Advertising
7301 Burleson
Austin, TX 78744-3207

Tarpon Hunters, LLC
c/o Douglas J. Powell
820 W. 10th
Austin, TX 78701-2065

U.S. BANKRUPTCY COURT
903 SAN JACINTO, SUITE 322
AUSTIN, TX 78701-2450

Chase Home Finance
3415 Vision Drive
Columbus, OH 43219-6009

CitiMortgage, Inc.
PO Box 6030
Sioux Falls, SD 57117-6030

Eduardo Gutierrez
c/o B Weldon Ponder, Jr, Attorney at Law
9442 Capital of Texas Highway N
Arboretum Plaza One #500
Austin, TX 78759-7262

Hickson Law, P.C.
4833 Spicewood Springs
Suite 200
Austin, TX 78759-8436

(p)KATENELL LLC
3432 GREYSTONE DR
STE 100
AUSTIN TX 78731-2357

Lillian Wilson, LLC
c/o Douglas J. Powell
820 W. 10th St.
Austin, TX 78701-2065

Ocwen Loan Servicing, LLC
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409-6493

Reagan National Advertising of Austin, Inc.
c/o Mitchell D. Savrick
4330 Gaines Ranch LP #150
Austin, TX 78735-6758

U. S. Attorney/Civil Process Clerk
601 N. W. Loop 410, Suite 600
San Antonio, TX 78216-5597

Capital One
PO Box 30285
Salt Lake City, UT 84130-0285

Chase Records Center
Attn: Correspondence Mail
Mail Code LA4-5555
700 Kansas Lane
Monroe, LA 71203-4774

Citibank NA
c/o McCarthy Holthus & Ackerman LLP
1255 W 15th St #1060
Plano TX 75075-4220

Eduardo Gutierrez
c/o Paul T. Morin
503 West 14th St.
Austin, TX 78701-1723

(p)HUNTER KELSEY OF TEXAS
3432 GREYSTONE DR
STE 100
AUSTIN TX 78731-2357

Katnell, LLC
c/o Douglas J. Powell
820 W. 10th
Austin, TX 78701-2065

Ocwen Loan Servicing, LLC
P.O. Box 24737
West Palm Beach, FL 33416-4737

Oscar Trevino
15212 FM 1825
Pflugerville, TX 78660-3130

(p)TARPON HUNTERS LLC
3432 GREYSTONE DR
STE 100
AUSTIN TX 78731-2357

U.S. Attorney General
Main Justice Building, Room 5111
10th and Constitution Ave. NW
Washington, D.C 20530-0001

United States Trustee - AU12
United States Trustee
903 San Jacinto Blvd, Suite 230
Austin, TX 78701-2450

Wells Fargo
MAC S4101-08D
100 West Washington 8th Floor
Phoenix, AZ 85003-1803

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Barton Creek Plaza II, Suite 320
3801 Capital of Texas Highway South
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Elizabeth June Hickson
4833 Spicewood Springs Rd., #200
Austin, TX 78759-8436

Rafael Montes de Oca
3417 Vintage Drive
Round Rock, TX 78664-7902

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Hunter-Kelsey of Texas LLC
4131 Spicewood Springs Road
Bldg J-1
Austin, TX 78759

Katenell, LLC
3432 Greystone Drive
Suite 100
Austin, TX 78731

Lillian Wilson, LLC
3432 Greystone Drive
Suite 100
Austin, TX 78731

Tarpon Hunters, LLC
3432 Greystone Dr.
Suite 100
Austin, TX 78731

End of Label Matrix	
Mailable recipients	34
Bypassed recipients	0
Total	34

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:

RAFAEL MONTES DE OCA

DEBTOR

CASE NO. 15-10587TMD
CHAPTER 13

**ORDER GRANTING DEBTOR'S MOTION FOR RELIEF FROM
AUTOMATIC STAY TO CONTINUE APPEAL
PENDING IN THE THIRD COURT OF APPEALS**

On this day on to be heard the Motion of RAFAEL MONTES DE OCA (Movant) for relief from stay regarding pending state litigation. The Court, noting that proper notice has been sent to all parties in interest concerning the Motion and no party having filed a response is of the opinion that the following order is appropriate:

It is, accordingly, ORDERED, ADJUDGED and DECREED that automatic stay provisions of 11 U.S.C Section 362 be and are hereby modified to permit Movant to prosecute the appeal that is currently stayed in the Third Court of Appeals, Cause No. 03-14-00668-CV, styled Rafael Montes De Oca, Appellant v. Eduardo Gutierrez, Appellee; and to take any and all such action as may be

necessary and incident to finalizing the state court action, including any further appeals.

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